

**CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8**

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*Gunther O. Hanke*  
Gunther O. Hanke, Reg. No. 32,989



COPY OF ORIGINAL  
PAPERS. ORIGINAL  
PAPERS IN POOR  
CONDITION.

*AKashin*  
**ANDRES KASHINOW**  
**SPECIAL PROGRAM EXAMINER**  
**TECHNOLOGY CENTER 3700**

8/16/04

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No. : 10/057,443  
Applicant : Arkady Kokish  
Filed : January 25, 2002  
Title : **BALLOON WITH THE VARIABLE RADIAL FORCE  
DISTRIBUTION**  
Art Unit : 3763  
Examiner : Manuel A. Mendez  
Docket No.: : ACSC 60171 (1721C)  
Customer No. : 24201

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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APR 26 2004  
TECHNOLOGY CENTER 3700

**PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT  
UNDER 37 CFR 1.181**

Dear Sir:

This paper is responsive to the Notice of Abandonment March 8, 2004. Applicant hereby petitions the Patent Office to withdraw its holding of abandonment of the above-identified patent application for failure to timely file a proper reply to the Office Action letter mailed on August 14, 2003.

Applicant's response to the Office Action was timely made on August 28, 2003, as witnessed by the attached copies of the filed documentation and proof of initial mailing (including Patent Office Acknowledgement of Receipt on Postcard). A Terminal

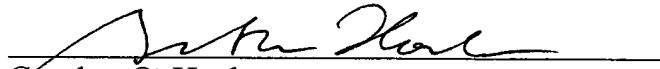
Disclaimer was timely mailed and was responsive to the Office Action. The abandonment of this application, therefore, is in error and Applicant respectfully requests that this application be revived and abandonment be rescinded.

No fees are due with this communication. However, if a fee is in fact due, the Commissioner is authorized to charge our Deposit Account No. 06-2425. **A duplicate of this letter is enclosed.**

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

By:



Gunther O. Hanke

Registration No. 32,989

GOH/psm

Howard Hughes Center  
6060 Center Drive, Tenth Floor  
Los Angeles, CA 90045  
Telephone: (310) 824-5555  
Facsimile: (310) 824-9696  
Customer No. 24201  
45991.1

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AUG 18 2003



UNITED STATES PATENT AND TRADEMARK OFFICE

FULWIDER PATTON LEE & UTECHT, LLP

APR 22 2004

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UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,443	01/25/2002	Arkady Kokish	9600.3891	1294

24201 7590 08/14/2003  
FULWIDER PATTON LEE & UTECHT, LLP  
HOWARD HUGHES CENTER  
6060 CENTER DRIVE  
TENTH FLOOR  
LOS ANGELES, CA 90045

ACSC - 60171

EXAMINER
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MENDEZ, MANUEL A

ART UNIT	PAPER NUMBER
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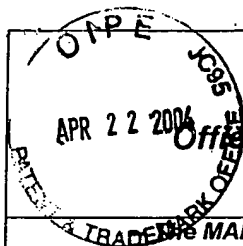
3763

DATE MAILED: 08/14/2003

*Response Due November 14, 2003*

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

10/057,443

Applicant(s)

KOKISH, ARKADY

Examiner

Manuel Mendez

Art Unit

3763

THE MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Art Unit: 3763

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,391,002. Although the conflicting claims are not identical, they are not patentably distinct from each other. Claims 21-24 disclose enhancements or limitations that are considered obvious design choices in view of the teachings of U.S. Patent No.

6,391,002. Therefore, claims 21-24 are not considered patentably distinct.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel Mendez whose telephone number is 703-308-2221. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Brian Casler can be reached on 703-308-3552. The fax phone numbers

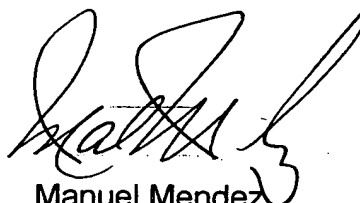
Application/Control Number: 10/057,443

Page 3

Art Unit: 3763

for the organization where this application or proceeding is assigned are 703-305-3590

for regular communications and 703-305-3590 for After Final communications.

A handwritten signature in black ink, appearing to read 'Manuel Mendez', with a stylized flourish at the end.

Manuel Mendez  
Primary Examiner  
Art Unit 3763

August 11, 2003

**Notice of References Cited**

APR 22 2004

Application/Control No.

10/057,443

Applicant(s)/Patent Under  
Reexamination  
KOKISH, ARKADY

Examiner

Manuel Mendez

Art Unit

3763

Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6391002	05-2002	Kokish	604/96.01
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

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**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

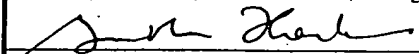
**NON-PATENT DOCUMENTS**

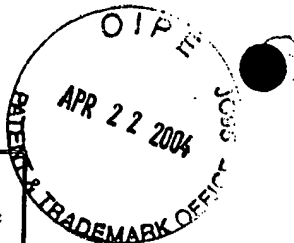
*		Include as applicable: Author, Title Data, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

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Günther O. Hanke, Reg. No. 32,989



**COPY**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of

Inventor: Arkady Kokish

Serial No. 10/057,443

Filed: January 25, 2002

For: **BALLOON WITH THE VARIABLE  
RADIAL FORCE DISTRIBUTION**

Examiner: Manuel Mendez

Group Art Unit: 3763

Client ID/Matter No. ACSC 61071 (1721C)

August 28, 2003

**TERMINAL DISCLAIMER TO OBVIATE  
A DOUBLE PATENTING REJECTION OVER A PRIOR PATENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

The owner, Advanced Cardiovascular Systems, Inc. ("ACS"), of the entire interest in the instant application hereby disclaims, except as provided below, the terminal part of any patent granted on the instant application, which would extend beyond the expiration date of any patent granted on Patent No. 6,391,002, filed on December 7, 1999 as shortened by any terminal disclaimer. Petitioner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the above-listed application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors, or assigns.

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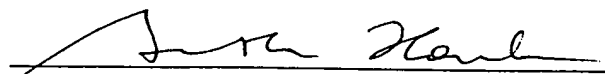


The required fee in accordance with 37 C.F.R. § 1.20(d), in the amount of \$110 is enclosed to cover the disclaimer. Please charge any additional fees or credit any overpayment to Deposit Account No. 06-2425. **A duplicate of this paper is enclosed.**

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

By:



Gunther O. Hanke

Registration No. 32,989

GOH:psm

Howard Hughes Center  
6060 Center Drive, Tenth Floor  
Los Angeles, CA 90045  
Telephone: (310) 824-5555  
Facsimile: (310) 824-9696  
Customer No. 24201

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Client ID/Matter No.: ACSC 60171 (1721C)  
Date Mailed: August 28, 2003  
Date Due: November 14, 2003  
Date Filed: January 25, 2002  
Serial No.: 10/057,443

Applicant: Arkady Kokish

Title: BALLOON WITH THE VARIABLE RESISTANCE  
DISTRIBUTION



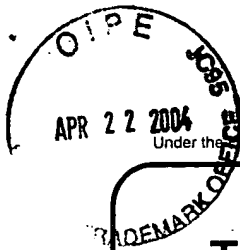
Documents enclosed:

1. Transmittal Form (PTO/SB/21)
2. Fee Transmittal (PTO/SB/17)
3. Terminal Disclaimer to Obviate A Double Patenting Rejection Over A Prior Patent
4. Check No. 083106 in the amount of \$110.00 to cover the disclaimer fee.

The U.S. Patent and Trademark Office Mail Room stamp hereon acknowledges receipt of the items indicated above on the date shown.

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<b>TRANSMITTAL FORM</b>  <i>(to be used for all correspondence after initial filing)</i>	Application Number	10/057/443	
	Filing Date	01/25/2002	
	First Named Inventor	Arkady Kokish	
	Art Unit	3763	
	Examiner Name	Manuel A. Mendez	
Total Number of Pages in This Submission	13	Attorney Docket Number	ACSC 60171 (1721C)

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	1. COPY - Terminal Disclaimer mailed 8/28/2003
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	2. COPY - Office Action mailed 8/14/ 003
<input type="checkbox"/> Certified Copy of Priority Document(s)	Remarks  CUSTOMER NO.: 24201	3. POSTCARD
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application		<b>RECEIVED</b>  APR 26 2004
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		TECHNOLOGY CENTER H3700
Firm or Individual name	FULWIDER PATTON LEE & UTECHT, LLP Gunther O. Hanke, Reg. No. 32,989	
Signature		
Date	March 18, 2004	

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Typed or printed name	Gunther O. Hanke, Reg. No. 32,989		
Signature		Date	March 18, 2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.